

**Remarks/Arguments:**

Claims 1-13 and 27-40 stand rejected.

Responsive to Examiner's last decision mailed March 17, 2003, Applicants filed a Notice of Appeal on May 2, 2003. Applicants' Appellant's Brief Pursuant to 37 CFR 1.192 and an Amendment were filed on July 2, 2003. The Examiner's Answer was mailed February 24, 2004. Appellant's argument before the Board of Patent Appeals and Interferences (the Board) was heard on March 9, 2005 and the Board's Decision on Appeal was mailed March 29, 2005. In its Decision, the Board affirmed the Examiner. Applicant subsequently filed a Request for Continued Examination on May 27, 2005 in which Applicant presented objective evidence under 37 CFR 1.132 of Applicant's entitlement to a Patent.

In accord with *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1996), Applicants presented for the Examiner's examination and consideration substantial and strong Secondary Considerations such as (1) long-felt but unsolved need, (2) failure of others, (3) unexpected results, and (4) commercial success relevant to the invention claimed in the pending application. These Secondary Considerations were presented in the Declaration of John E. Holland.

The Examiner now summarily, and without any specificity whatsoever, "finds the [Declarant's] statement unpersuasive." The Examiner supports his position with only the general assertion that "there exists a bona-fide *prima facie* case of obviousness." The Examiner then essentially repeats his verbatim prior rejections of the claims and Applicant's arguments of July 3, 2003. Applicant, thus, has no basis for understanding what, if any, evaluation the examiner performed in reaching his conclusion.

Applicant directs the Examiner's attention first to the Manual of Examining Procedure (MPEP), § 716.01(B). Specifically, in consideration of evidence traversing rejections on the basis of obviousness, the MPEP states that where "the evidence is insufficient to overcome the rejection, the examiner must specifically explain why the evidence is insufficient." General statements, without an explanation supporting such findings are insufficient. As the CCPA stated many years ago:

As long as there is a question of obviousness, no matter how trivial that question may seem, we think appellants have the right to have considered the Rule 132 affidavit which allegedly shows new and unexpected results. If that affidavit is strong enough in its showing of new and unexpected results, the Patent Office's position that the claimed invention is obvious may be found to be rebutted.

*In re Orfeo*, 440 F.2d 439, 169 USPQ 487, 489 (C.C.P.A. 1971)

More recently, the Board of Patent Appeals and Interferences (BPAI) has asserted that the appropriate procedure is to reweigh the entire merits of the matter and hence consider all of the evidence of record anew once rebuttal evidence is submitted. *Ex parte* Remark, 15 USPQ2d 1498, 1502 (B.P.A.I. 1990).

Further, Applicant directs the Examiner's attention to Page 9 (first paragraph and Footnote 3) of the Board's Decision on Appeal dated March 29, 2005. There the Board states that "Andrieu's cover is not formed from high performance [high-strength] yarns<sup>3</sup>..." In accordance with (MPEP), § 706.07(h)(XI)(A), "a Board decision in an application is the 'law of the case,' and is thus controlling in that application and in any subsequent, related applications." Therefore, the Examiner cannot continue to assert that Andrieu et al. discloses a high strength yarn, as he has done on Page 4 of the June 15, 2005 Office Action. Further, as defined in Applicant's specification, as stated by the Board, and as claimed by Applicant, "high performance yarns," as used in this application are yarns which have a tensile modulus equal to or greater than 150 grams/denier and a tenacity equal to or greater than 7 grams/denier. Andrieu's yarns do not meet this specification.

Applicant, therefore, respectfully requests that the Examiner perform an evaluation and examination on the entire merits of the application in accordance with the requirements of the MPEP and existing case law. If the Examiner then believes that the objective evidence submitted May 27, 2005 is insufficient, Applicant requests that the Examiner provide a specific, legally supported justification for his rejections based upon Applicant's evidence.

Respectfully submitted,



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